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AT&T

Frank S. Simone
Government Affairs Director

Suite 1000
1120 20th Street, N.W.
Washington, DC 20036
202 457-2321
FAX 202 457-2165
fsimone@lgamgw.attmail.com

December 9, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW, Room TWB-204
Washington, D.C. 20554

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DEC - 9 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte Meeting, CC Docket No. 98-147, Deployment of Wireline Services Offering Advanced Telecommunications Capability

Dear Ms. Roman Salas:

On Tuesday, December 8, 1998, Leonard Cali, James Bolin, Michael Pfau, and I, of AT&T, met with Larry Strickling, Chief of the Common Carrier Bureau, Carol Mattey, Chief of the Policy Division, and Jordan Goldstein, Attorney for the Policy Division. During this meeting we discussed AT&T's views on the Commission's separate affiliate proposal and AT&T's proposed draft rules on collocation and loop unbundling.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206(a)(2) of the Commission's rules.

Sincerely,

Attachments

cc: Larry Strickling
Carol Mattey
Jordan Goldstein

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Recycled Paper

Separate affiliate

- Infirm as a matter of law
- Infirm as a matter of policy

Collocation

- Minimum national guidelines and rules will foster entry
- Expand collocation options
- Require nondiscrimination, monitor performance

Loop unbundling

- Basic loop (voice and analog data services)
- xDSL capable loop
- xDSL equipped loop

CC Docket No. 98-147
Deployment of Wireline Services Offering Advanced Telecommunications Capability

Separate Affiliate Proposal

The NPRM's "data affiliate" proposal is contrary to the 1996 Act, and would exceed the authority granted the Commission by Congress.

- Congress imposed specific requirements on ILECs in § 251(c), and expressly exempted that section from the Commission's otherwise broad forbearance powers under § 10.

- There is no relevant legal distinction between POTS and advanced services -- both are subject to § 251(c) and to § 10.
  --Advanced services carry voice as well as "data."

- The NPRM's proposal would short-circuit the regime Congress established by effectively using the § 272 requirements as a template for granting forbearance from § 251(c).

- Congress wrote the § 272 separate affiliate safeguards to apply in clearly defined circumstances: to BOCs that have met the § 271 requirements for in-region interLATA relief.
  --Section 272 seeks to limit BOCs' ability to abuse their remaining market power after they have satisfied § 271.
  --Nothing in § 272 suggests that section suffices to confer non-ILEC status on ILEC affiliates.
  --Section 272(a)(1)(A) does not support the NPRM's proposal. If anything, that section makes clear that that an affiliate that complies with § 272 does not thereby escape § 251(c). (See attachment).

- Congress provided criteria for determining "ILEC" status in § 251(h). No reasonable interpretation of that section, or of the Act as a whole, could conclude that the proposed "data affiliates" can escape regulation as incumbent LECs.

Separate Affiliate Proposal

The NPRM's "data affiliate" proposal is contrary to the 1996 Act, and would exceed the authority granted the Commission by Congress.

- The NPRM posits that proposed affiliate would be "truly separate" from the ILEC, and therefore not subject to § 251(c). In fact, affiliate would simply be the ILEC's alter ego.
  - --Affiliate would be wholly-owned by ILEC, and therefore have no legally enforceable duty to act other than in the interest of ILEC.
  - --Proposal would permit ILEC alter ego to operate in ILEC territory, using ILEC brand, but without protections Congress enacted in § 251(c).
  - --If ILEC is permitted to transfer facilities to affiliate, then affiliate also would operate using the very network assets that § 251(c) now covers.

- The proposed requirements for disclosure of dealings between an ILEC and its wholly-owned affiliate do not alter ILEC's ability to control affiliate's operations.
  - --Congress could have mandated "transparency" for ILEC operations in lieu of § 251(c). It did not do so.
  - --In all events, the record before the Commission clearly shows that its § 272 rules have been ineffective. BOCs have openly refused to comply with existing § 272 disclosure requirements, and have engaged in numerous other violations.

Separate Affiliate Proposal

Contrary to the argument that has been offered in this proceeding, § 272(a)(1)(A) does not support the NPRM's proposal. In fact, that section makes clear that an affiliate that complies with § 272 does not thereby escape § 251(c). Section 272(a)(1) provides that:

> (1) In general.--A Bell operating company (including any affiliate) which is a local exchange carrier that is subject to the requirements of section 251(c) may not provide any service described in paragraph (2) unless it provides that service through one or more affiliates that--
>
> > (A) are separate from any operating company entity that is subject to the requirements of section 251(c); and
> >
> > (B) meet the requirements of subsection (b).

If anything, this provision demonstrates that Congress understood that BOCs might try to evade the Act's requirements by creating subsidiaries, and intended that such subsidiaries would be treated as ILECs pursuant to 251(h). Section 272(a)(1) could simply have referred to "any BOC" -- particularly since the statutory definition of "Bell operating company" includes successors or assigns "that provide wireline telephone exchange service."[1] Instead, Congress invoked § 251(c), which applies not only to BOCs, but to all ILECs; and Congress therefore invoked the criteria of 251(h) in addition to § 3(4)'s more limited requirements for a carrier to be deemed a BOC. In § 272(a)(1), as elsewhere in the Act, Congress took pains to prevent ILECs from escaping the specific obligations it imposed on incumbents in § 251(c).

Section 272(a)(1)(A) nowhere states that a BOC affiliate that complies with § 272 is therefore not subject to § 251(c). Instead, that section provides that in order

[1] 47 U.S.C. § 153(4)(B).

for a BOC affiliate to offer in-region interLATA services following Commission approval of the BOC's § 271 application for a given state, the affiliate must both (*i*) comply with § 272(b) and (*ii*) be sufficiently separate from the BOC (or from the BOC's ILEC affiliate) so as not to be subject to section 251(c) -- that is, the affiliate must not fall within § 251(h)'s definition of an "incumbent local exchange carrier." By its plain language, § 272(a)(1)(A) is a mandatory phrase, not a declaratory one. That section provides that in order to offer certain services, a § 272 affiliate "must not be an ILEC;" not that it "is not an ILEC" if it satisfies § 272(b).

The Commission therefore may not point to section 272(a)(1)(A) as evidence that an affiliate that complies with § 272 is a non-ILEC. To the contrary, that section charges the Commission with determining whether a BOC affiliate is sufficiently separate to be deemed a non-ILEC pursuant to § 251(h), in addition requiring that such an affiliate satisfy section 272(b).

Collocation

National guidelines and rules applicable to collocation are needed now to achieve the following:

- Expand Collocation Options
- Expand Equipment Types That May Be Collocated and Limit Qualification Constraints
- Assure Nondiscrimination When Space Exhausts
- Provide for Specific Monitoring Collocation Performance

Loop Unbundling

Three separate loop configurations are necessary to support the development of competition.

- Basic Loop: to permit competition in the local market for traditional voice only or analog data services
- xDSL Capable Loop: to permit competition for data or voice & data over a loop where conditions are conducive (loop length, intervening electronics & collocation)
- xDSL Equipped Loop: to permit competition for data or voice & data services over a loop where incumbent has offered service and/or condition inhibit delivery of a comparable service